THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.1339 of 2006

Dated: 28-01-2006

K. Sivarami Reddy.

..... PETITIONER

AND

The Municipal Corporation of Nellore.

.....RESPONDENT

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO.1339 of 2006

ORDER:

The petitioner obtained building permission dated 01-01-2004 from the respondent-Corporation for construction of ground plus two floors. It appears he submitted a revised plan in August, 2005 and having waited for 30 days, as alleged, he constructed third floor taking advantage of Section 437 of the Hyderabad Municipal Corporation Act, 1955 ('the HMC Act' for brevity). One D. Ajay Kumar filed a writ petition, being W.P.No.497 of 2006, before this Court alleging unauthorized construction by the petitioner herein. This Court, by order dated 06-01-2006, dismissed the said writ petition observing that if there are any deviations made in the construction of flats/residential houses by the petitioner, it shall be open to the respondent-Corporation to issue notice to the builder and take appropriate action in the matter. It is alleged that the respondent-Corporation straight away issued notice dated 20-01-2006 under Section 636 of the HMC Act directing the petitioner to remove unauthorized and objectionable deviations within 24 hours and he was also informed that the Corporation would remove the unauthorized construction if the

petitioner failed to do so. In the said notice/order under Section 636 of the HMC Act, it is alleged that the petitioner constructed third floor without permission and that he has deviated grounds, rear and side set back rule violating the provisions of Sections 440, 452 and 636 of the HMC Act. Assailing the said notice dated 20-01-2006 under Section 636 of the HMC Act, the present writ petition is filed.

The matter came up for admission on 25-01-2006. This Court so as to enable the learned Standing Counsel for respondent-Corporation adjourned the matter further directing the learned Standing Counsel to get the record in the matter as the impugned order refers to the notice under Section 452 of the HMC Act, which is purportedly issued preceding the impugned order.

The learned Standing Counsel has produced the record. The same would show that the Town Planning Engineer inspected plot No.133 in L.P.No.101/95, Magunta Lay-out in the presence of one Sreenivasulu Reddy, Supervisor of the site, and submitted a report that the petitioner constructed third floor without permission and deviated provisions of HMC Act by leaving lesser set back than what is required. Based on the same, a notice under Section 452 (1) of the HMC Act was issued and as the builder did not remove the unauthorized portions of the construction, the impugned order was directed to be issued.

The learned counsel for the petitioner, Sri N. Subba Reddy, submits that the notice was not served on the petitioner, but it was served on one Sreenivasulu Reddy. Secondly he contends that on 21-01-2006 itself, after receiving the impugned order, the petitioner submitted a report to the respondent to consider the revised plan submitted by him in August, 2005 and also asserting that he did not deviate approved plan. According to the learned counsel though the initial permission was obtained for construction of ground plus two floors, in the revised plan, the petitioner sought for construction of third floor and if the same is approved by the respondent-Corporation, there would not be any deviation from the original sanctioned plan dated 01-01-2004.

The learned Standing Counsel for respondent-Corporation,
Sri S. Venkateswara Reddy, relying on the record, submits that the respondent-Corporation has taken action against unauthorized construction made by the petitioner in accordance with the provisions of Sections 440, 452 and 636 of the HMC Act and therefore, interference is not called for.

After perusing the file produced before this Court, it becomes clear that the notice dated 21-06-2005 under Section 452 of the HMC Act and Sections 42(1) and 43(1) of the Andhra Pradesh Urban Areas (Development) Act, 1975, addressed to the petitioner was issued by the Commissioner. The same was served on Mr. C. Sreenivasulu Reddy.

Be that as it is, after receiving the impugned order dated 20-01-2006, the petitioner submitted a representation on 21-01-2006 requesting to grant personal hearing and further informing that he has already submitted a revised plan. A copy of the said representation dated 21-01-2006 is also found in the file.

The inspection report would certainly support the contention of the respondent that there are deviations. However, there is no proof that the representation of the petitioner was considered. Therefore, though this Court is not inclined to interfere with the impugned order, so as to ensure fairness, liberty is given to the petitioner to approach the respondent-Corporation on 01-02-2006 at 11-00 A.M. As and when the petitioner appears with all the necessary record, the Commissioner shall give a personal hearing to him and also consider the revised plan, if any, and pass a reasoned order either against or in favour of the petitioner. Such an order shall be passed by 03-02-2006. Till 03-02-2006, there shall be status quo as on today.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

_____

(**V.V.S.RAO, J**)

27th January 2006

Note: Issue CC by 30-01-2006

B/o

ghn